

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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GREGORY LEONARD,

Case No. 2:03-cv-01293-RCJ-NJK

v.

Petitioner.

ORDER

ISIDRO BACA,¹ et al.,

Respondents.

16 This capital habeas corpus action was stayed on August 30, 2007, pending the
17 petitioner's exhaustion of claims in state court. ECF No. 74. On August 14, 2018, the
18 petitioner, Gregory Leonard, filed a motion to vacate the state and reopen these
19 proceedings. ECF No. 108. In that motion, Leonard states that the state-court
20 proceedings have concluded. The court will grant Leonard's motion to vacate the stay
21 and will set a schedule for further litigation of this action.

22 It is therefore ordered that petitioner's Motion to Vacate Stay and Reopen
23 Federal Habeas Corpus Proceedings (ECF No. 108) is granted. The stay of this action
24 is lifted.

25 It is further ordered that the following schedule shall govern the further litigation
26 of this action:

¹ Because petitioner is now housed at the Northern Nevada Correctional Center, the warden of that facility is substituted for Timothy Filson as a respondent.

1 **1. Amended Petition.** If necessary, petitioner shall file and serve a second
2 amended petition for writ of habeas corpus within 60 days after entry of this order. The
3 second amended petition shall specifically state whether each ground for relief has
4 been exhausted in state court; for each claim that has been exhausted in state court,
5 the second amended petition shall state how, when, and where that occurred. If
6 petitioner determines that a second amended petition need not be filed, then, within 60
7 days after entry of this order, petitioner shall file and serve a statement to that effect.

8 **2. Response to Petition.** Respondents shall have 60 days following service of
9 the second amended petition to file and serve an answer or other response to the
10 second amended petition. If petitioner does not file a second amended petition,
11 respondents shall have 60 days following the due-date for the second amended petition
12 to file and serve an answer or other response to petitioner's first amended petition (ECF
13 No. 57).

14 **3. Reply and Response to Reply.** Petitioner shall have 45 days following
15 service of an answer to file and serve a reply. Respondents shall thereafter have 30
16 days following service of a reply to file and serve a response to the reply.

17 **4. Briefing of Motion to Dismiss.** If respondents file a motion to dismiss,
18 petitioner shall have 60 days following service of the motion to file and serve a response
19 to the motion. Respondents shall thereafter have 30 days following service of the
20 response to file and serve a reply.

21 **5. Discovery.** If petitioner wishes to move for leave to conduct discovery,
22 petitioner shall file and serve such motion concurrently with, but separate from, the
23 response to respondents' motion to dismiss or the reply to respondents' answer. Any
24 motion for leave to conduct discovery filed by petitioner before that time may be
25 considered premature, and may be denied, without prejudice, on that basis.
26 Respondents shall file and serve a response to any such motion concurrently with, but
27 separate from, their reply in support of their motion to dismiss or their response to

1 petitioner's reply. Thereafter, petitioner shall have 20 days to file and serve a reply in
2 support of the motion for leave to conduct discovery.

3 6. **Evidentiary Hearing.** If petitioner wishes to request an evidentiary hearing,
4 petitioner shall file and serve a motion for an evidentiary hearing concurrently with, but
5 separate from, the response to respondents' motion to dismiss or the reply to
6 respondents' answer. Any motion for an evidentiary hearing filed by petitioner before
7 that time may be considered premature, and may be denied, without prejudice, on that
8 basis. The motion for an evidentiary hearing must specifically address why an
9 evidentiary hearing is required and must meet the requirements of 28 U.S.C. § 2254(e).
10 The motion must state whether an evidentiary hearing was held in state court, and, if so,
11 state where the transcript is located in the record. If petitioner files a motion for an
12 evidentiary hearing, respondents shall file and serve a response to that motion
13 concurrently with, but separate from, their reply in support of their motion to dismiss or
14 their response to petitioner's reply. Thereafter, petitioner shall have 20 days to file and
15 serve a reply in support of the motion for an evidentiary hearing.

16 IT IS SO ORDERED.

17 DATED THIS 24th day of October, 2018.


E. Jones